

**REMARKS**

This application has been carefully reviewed in view of the above referenced Restriction Requirement. The Restriction Requirement groups claims as follows:

Group I - Claims 1-51 and 86-89.

Group II - Claims 52-65 and 90-93.

Unaccounted for - Claims 66-85.

Applicants respectfully traverse the restriction requirement, but provisionally elect Group I consisting of claims 1-51 and 86-89. For purposes of this provisional election, Applicants assume that the Examiner intended that claims 66-85 be included in Group II. Grounds for the traversal are as follows:

**No Additional Search Burden Appears to Be Required**

The Restriction Requirement indicates that both groups are classified in 725/34 strongly suggesting that full search and examination of all claims will pose little if any additional burden. Additionally, a first search has already been conducted by the Examiner.

**Separate Utility Does Not Appear Well Supported by the Restriction**

The Restriction Requirement indicates that the inventions are subcombinations with separate utility (to paraphrase). Applicants agree that the disclosed subcombinations can be used together without limitation.

It is asserted that Invention II has separate utility such as a cable television system allowing users to select their preferred advertisement. While Applicants concur that Group II does have such utility, it is submitted that certain of the claims of Group I clearly has similar utility (e.g., claim 1 also permits a user to select preferred advertisements). Should the restriction be held final, Applicants wish for the record to reflect that Applicants make no admission that the claims of Group I do not have the utility that is alleged to be separate and attributed by the Examiner to Group II.

**The Restriction Does Not Account for Certain Claims**

Claims 66-85 do not appear to be accounted for in the Restriction Requirement, even though these claims remain pending in the current application. While not admitting that the

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restriction is proper, Applicant submits that claims 66-85 are most closely similar to those of Group II and thus should probably be a part of that group. For purposes of this Restriction Requirement, it is assumed that the Examiner intended this to be the case and that Group II should consist of claims 52-85 and 90-93. That said, Applicants submit that the restriction is improper as explained above.

#### Financial Considerations

It is noted that Applicants have paid excess claims fees in this case and have already responded to one substantive Office Action with substantial amendments in an effort to conclude prosecution on the merits. If the restriction is made final, such fees will have to be paid again without refund for the original fees paid. Such fees will be required under the newly revised fee schedule which will pose a substantial financial penalty to Applicants. Accordingly, any minor additional examination burden is believed to have already been paid for by Applicants. While this argument is certainly not generally considered in making determinations on restriction, it is submitted that in situations where restriction is questionable, the issue should be resolved in favor of the Applicants in order to avoid an inequitable financial penalty.

In view of this communication, reconsideration and removal of the current Restriction Requirement is Respectfully requested, along with full examination of all claims. All claims are believed to be in condition for allowance and such is respectfully requested at an early date.

Respectfully submitted,

  
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